

# EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

CTD NETWORKS, LLC,	.	
	.	
PLAINTIFF,	.	
vs.	.	DOCKET NO. 6:22-CV-1034-XR
	.	
AMAZON.COM, INC.,	.	
	.	
DEFENDANT.	.	
	.	
CTD NETWORKS, LLC,	.	
	.	
PLAINTIFF,	.	
vs.	.	DOCKET NO. 6:22-CV-1039-XR
	.	
CISCO SYSTEMS, INC.,	.	
	.	
DEFENDANT.	.	
	.	
CTD NETWORKS, LLC,	.	
	.	
PLAINTIFF,	.	
vs.	.	DOCKET NO. 6:22-CV-1042-XR
	.	
GOOGLE, LLC,	.	
	.	
DEFENDANT,	.	
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CTD NETWORKS, LLC,	.	
	.	
PLAINTIFF,	.	
vs.	.	DOCKET NO. 6:22-CV-1049-XR
	.	
MICROSOFT CORPORATION,	.	
	.	
DEFENDANT.	.	

TRANSCRIPT OF MOTION HEARING PROCEEDINGS  
BEFORE THE HONORABLE XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE  
APRIL 10, 2023

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REPORTED BY: GIGI SIMCOX, RMR, CRR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT  
SAN ANTONIO, TEXAS

1       (San Antonio, Texas; April 10, 2023, at 10:30 a.m., in  
2       open court.)

3               THE COURT: 22 civil 1034, CTD Networks versus Amazon  
4       and then other related cases.

5               How are we going to do this? Are we going to do one  
6       at a time, or is someone going to argue on behalf of  
7       everybody, or what's the plan?

8               MR. ANDERSON: Your Honor, it's my belief that Amazon  
9       would proceed first and then there would probably be some  
10      follow-on argument by the other parties.

11              THE COURT: That's fine.

12              So then 22 civil 1034, who do we have for the  
13      plaintiffs?

14              MR. TALANOV: Good morning, Your Honor, Kyril Talanov  
15      with Ramey LLP here on behalf of plaintiff CTD Networks.

16              THE COURT: Thank you.

17              And for Amazon.

18              MR. ANDERSON: Neil Anderson on behalf of Amazon.

19              THE COURT: Thank you.

20              So we have two pending motions. We have Amazon's  
21      motion to dismiss for failure to state a claim. We have  
22      plaintiff's motion for leave to amend complaint.

23              I guess I should start off with the plaintiff's  
24      motion for leave to amend the complaint. It's opposed. The  
25      problems I guess I have with your motion for leave to amend

1 complaint is I don't know how it fixes anything.

2 Counsel, do you want to address that?

3 MR. TALANOV: Yes, Your Honor, if I may. Once again,  
4 Kyril Talanov on behalf of plaintiff.

5 As sort of preluded in the motion itself, essentially  
6 the complaint provides amended claim charge that provide  
7 further evidence to add additional detail to support the facts  
8 that defendant Amazon complains is missing in its motion to  
9 dismiss.

10 And specifically, Your Honor, there are three points  
11 I believe that all defendants made. I will -- we'll obviously  
12 start with Amazon. But essentially the number one, first and  
13 foremost complaint was that CTD's complaint named multiple  
14 products and did not point a specific single product, or in  
15 the alternative explain that multiple defendant's products  
16 work together in an integrated fashion as a whole, thereby  
17 providing benefit to the defendant as required under the  
18 *Centillion-Grecia* litany of cases.

19 Number two, Your Honor, I believe was a complaint  
20 that certain elements of the claims were not charted.  
21 Evidence was not provided. I believe that was addressed as  
22 well.

23 And number three, I believe all defendants also made  
24 an argument that defendants merely provide software;  
25 therefore, they cannot implement the entire system as a whole,

1 put it into use, and therefore obtain benefit from each and  
2 every element.

3 Defendants argue that their software is simply one  
4 component. They don't provide hardware. It's the end  
5 customer that has to download and put this antivirus or  
6 defense software into use, and therefore, defendants argue  
7 that they cannot possibly directly infringe.

8 And Your Honor, we believe that the amended  
9 complaints, the proposed amended complaints for the motion to  
10 leave address each one of these three points and I'm happy to  
11 elaborate on each one of them.

12 THE COURT: So let me hear from the defendant.

13 MR. ANDERSON: Yes, Your Honor, if I may.

14 THE COURT: Yes.

15 MR. ANDERSON: Yes, I would like to discuss Amazon's  
16 motion to dismiss along with this countermotion.

17 I believe CTD's counsel has mischaracterized at least  
18 Amazon's argument. In Amazon's case CTD -- Amazon's primary  
19 complaint with respect to the infringement contention charts  
20 was that actually no product was identified as the accused  
21 product.

22 So this amendment we see here, we believe it confirms  
23 that Amazon's motion to dismiss should be granted. We believe  
24 it should be also granted with prejudice. There's really no  
25 valid justification that exists for this proposed amendment,

1 and I want to make clear this isn't a situation in which some  
2 information was provided with respect to how Amazon  
3 purportedly infringed in the original complaints.

4 This is a case where an entirely new infringement  
5 theory has been brought, unfortunately, for the first time  
6 this last Friday. These new claim charts bear absolutely no  
7 resemblance to the claim charts that were provided with the  
8 original complaint, or the first-amended complaint, or the  
9 infringement contentions that CTD served in early January.

10 So this is really a completely new infringement case  
11 that accuses a product for the first time. CTD has had six  
12 months plus in order to -- six months plus of opportunities in  
13 order to amend its complaint in order to identify a product  
14 and we believe this motion to amend is untimely and  
15 unjustified in this situation.

16 THE COURT: So Mr. Talanov, I mean, I'm looking at  
17 your proposed amended complaint. I'm looking at paragraph 18,  
18 the accused instrumentalities or the accused products, and you  
19 already start off with a problem. You go "by way of example  
20 and without limitation." I mean, how is a defendant supposed  
21 to know which product is infringing with a phrase like that?

22 MR. TALANOV: Forgive me, Your Honor. Perhaps that  
23 language was -- should have been corrected; however, the  
24 complaint specifically points to the charts for the underlying  
25 evidence.



1 THE COURT: Well, but let me stop you here. What is  
2 the accused product? You say in your proposed amended  
3 complaint it's the Amazon Cloud Security System. Is that a  
4 product, or what is that?

5 MR. TALANOV: Your Honor, the accused product or  
6 system in this case is Amazon CloudWatch and that name appears  
7 up front on the first page of the appended infringement charge  
8 which are incorporated by reference in the complaints.

9 THE COURT: Well, that's what I'm trying to get at,  
10 is like, I can't figure out what exact product you're  
11 complaining about. So Amazon offers a lot of things, and so  
12 if you look at those websites that you've prompted us to it  
13 talks about Cognito, Guard Duty, AWS Identity and Management,  
14 Key Management Service, WAF.

15 So what is the exact product you're complaining of?

16 MR. TALANOV: Your Honor, the exact accused product  
17 is Amazon CloudWatch and Amazon itself describes it as a  
18 unified security agent and we have provided specific evidence  
19 of that in the claim chart. I'm happy to walk the Court  
20 through that, but again, just to rebut what opposing counsel  
21 has just argued, this specifically points to one product.

22 I believe counsel argued that plaintiff has not  
23 identified a single product. In this case, it is a single  
24 product or system, if you may, that Amazon itself calls a  
25 unified agent for implementing this distributed security

1 system in a computer network.

2 And Your Honor, we apologize --

3 THE COURT: Go ahead.

4 MR. TALANOV: We apologize if perhaps the language of  
5 that statement that Your Honor points to in the complaint,  
6 it -- we're happy to revise it to state specifically that  
7 we're accusing Amazon CloudWatch, but Your Honor, our belief  
8 was that by pointing specifically to the claim charts that say  
9 at the very top that the product, the one and only product or  
10 system that's being accused is the Amazon CloudWatch and its  
11 components that all work together as a whole, is what is being  
12 accused.

13 THE COURT: So I'm looking at your various exhibits  
14 that you have to the proposed amended complaint and you talk  
15 about Key Management Service, WAF, Regions and Availability  
16 Zones. If I give you leave to amend the complaint, what I'm  
17 expecting to see is just an allegation against CloudWatch and  
18 a new claim chart, but not all this -- this practical guide.

19 I mean, if I understand this right the practical  
20 guide is not even an Amazon practical guide. So I don't even  
21 know what that's doing, other than taking up pages?

22 MR. TALANOV: Yes, Your Honor.

23 If plaintiff is granted leave to amend, we will  
24 correct the language in the complaint itself to specifically  
25 point to the one product being accused in this case which is

1 Amazon CloudWatch and we will carefully make sure that only  
2 Amazon evidence is pointed to.

3 THE COURT: So how are you going to be prejudiced at  
4 this stage of the litigation with me just granting leave to  
5 amend a complaint that just references an allegation against  
6 CloudWatch?

7 MR. ANDERSON: Well, Your Honor, CTD has had six  
8 months' opportunity to amend its complaint to accuse a  
9 product. Amazon has essentially had to litigate for six  
10 months against a black box. Amazon was required to bring --  
11 essentially its hands were tied.

12 It was required to bring the instant motion to  
13 dismiss and CTD had many opportunities to during briefing.  
14 You know, CTD obviously opposed Amazon's motion and then on  
15 the eve of this hearing which had been scheduled for a month  
16 CTD makes this move to seek to amend.

17 Amazon would seek attorney fees and costs related to  
18 its expenses in conjunction with bringing its motion to  
19 dismiss.

20 THE COURT: So I was going to say, I mean, why isn't  
21 that cured by me not granting that right now but at an  
22 appropriate time in this litigation engaging in cost shifting  
23 for whatever expenses were incurred as a result of this motion  
24 to dismiss? Doesn't that cure any prejudice?

25 MR. ANDERSON: I believe that addresses the majority

1 of the prejudice.

2           Nevertheless, we believe that any dismissal here  
3 should be with prejudice for the simple reason that CTD has  
4 not been diligent. There's no real logical or valid  
5 explanation for its actions here, and also because we believe  
6 CTD's proposed amendment would be futile for some of the same  
7 reasons that Amazon has already briefed in its briefing with  
8 respect to the first-amended complaint.

9           THE COURT: Well, the futility, though, if he's just  
10 going to bring now a claim against CloudWatch, I mean, at this  
11 point I'm expecting to see -- we won't have the problems with  
12 integrated -- the failure to establish elements for each of  
13 the integrated products because we're not going to have  
14 products, plural, we're just going to have one product being  
15 alleged to infringe.

16           So how is there futility there?

17           MR. ANDERSON: Well, Your Honor, if I could share  
18 some slides here. Many of the same arguments that Amazon  
19 advanced in its motion to dismiss --

20           THE COURT: Okay. Well, now, I grant to you the  
21 willfulness. So those other two points, yes, but I guess I  
22 was focusing just on the direct infringement.

23           MR. ANDERSON: Yes, Your Honor.

24           As Amazon made clear in its briefing, CTD's patent  
25 claims require agents or distributed agents that perform the

1 specific security functions that are recited in each of the  
2 claims.

3           Here -- excuse me, I'll skip forward.

4           Here, for the first time, CTD has identified an agent  
5 which it identifies as the CloudWatch agent, but then in  
6 various claim limitations that agent seems to disappear from  
7 their contentions in their claim charts. All of a sudden, we  
8 are talking about Amazon CloudWatch as a service as a whole,  
9 as opposed to an actual agent that's distributed on individual  
10 computers in a network.

11           In addition, many of the claim limitations -- much of  
12 the evidence that they provide in support of claim limitations  
13 really provides no evidence of infringement of that specific  
14 claim limitation.

15           For example, this limitation here, Limitation 1H of  
16 the '442 patent describes agents that schedule associated  
17 individual computers for different antiviral software updates  
18 based on different levels of probabilities of an intrusion or  
19 attack.

20           Nothing in this claim chart mentions or describes an  
21 antivirus update. And more than that, aside from the fact  
22 that they don't talk about antivirus updates anywhere in this  
23 claim chart, the automated actions that they point to as  
24 purported evidence clearly are scheduled not by an agent, an  
25 agent on individual computers, but by the users of the

1 software. So there still are these problems of futility of  
2 their amendment, Your Honor.

3 In addition, the *Centillion* case provides an  
4 additional argument. CTD really has not pled anything in  
5 their amended complaint or claim charts to describe how Amazon  
6 purportedly uses the system.

7 Use of a system for purposes of infringement under  
8 *Centillion* requires that a party must put the invention into  
9 service. It must control the system as a whole and obtain  
10 benefit from it and there's nothing in the complaint  
11 describing that.

12 Also making a system under *Centillion* requires that  
13 Amazon would need to put all of the components, including the  
14 individual computers in the network into service, and there's  
15 no contention that Amazon performs that limitation either.

16 So there still are these issues of futility.

17 Your Honor addressed willfulness and presuit damages.  
18 We believe that CTD's second-amended complaint clearly shows  
19 that those issues should be dismissed with prejudice.

20 I don't know if Your Honor has any further questions  
21 with respect to that.

22 THE COURT: No. Thank you, Mr. Anderson.

23 Go ahead.

24 MR. ANDERSON: I was just going to say, so regarding  
25 timing, CTD's motion has requested kind of an indefinite stay

1 of the litigation. We believe that, you know, that this brand  
2 new infringement theory that's been disclosed for the first  
3 time does require providing Amazon some additional time in  
4 order to evaluate the case.

5 Amazon would propose an extension of discovery  
6 deadlines here for approximately three months to allow Amazon  
7 to evaluate the new case that CTD is bringing or attempting to  
8 bring, and also for the parties adequately to brief whether  
9 CTD should even be granted leave to bring this amendment.

10 THE COURT: Thank you.

11 So let's go back to Mr. Talanov.

12 This proposed amended complaint that I may allow you  
13 to do, why should the willfulness and the presuit be dismissed  
14 without prejudice?

15 MR. TALANOV: Your Honor, if I may, so we will  
16 stipulate to -- I believe the way we have seen this done in  
17 other courts in this district is we may -- plaintiffs  
18 sometimes are given the opportunity to replead if discovery  
19 allows facts to support presuit knowledge.

20 Your Honor, we will agree to dismiss allegations of  
21 willfulness at this point and reserve the right to replead  
22 them should discovery show presuit knowledge if Your Honor  
23 permits.

24 THE COURT: Yeah. Thank you.

25 So here's the rulings on the Amazon case. The motion

1 to dismiss for failure to state a claim is granted in part,  
2 denied in part. That's Docket Number 14. The willfulness and  
3 presuit is dismissed without prejudice.

4 Otherwise, Amazon's motion to dismiss is also mooted  
5 in light of the fact that I'm granting leave to amend  
6 complaint, but that leave to amend complaint is granted with  
7 the following conditions.

8 We're only going to have an amended complaint against  
9 CloudWatch, and the practical guide is going to not be  
10 included in any amended complaint. And we're going to need --  
11 so Mr. Talanov, they have identified for you all the specifics  
12 of what you're going to see for the next round of a motion to  
13 dismiss, and so you best be prepared to address those round  
14 two.

15 Otherwise, I'll take up this whole thing about the  
16 scheduling order once I take care of all four.

17 MR. ANDERSON: And just a point of clarification,  
18 Your Honor. Is the court suggesting that CTD should revise  
19 its second-amended complaint and withdraw its current motion  
20 so that we don't have to respond to two separate motions to  
21 amend?

22 THE COURT: I'm not sure I follow you.

23 MR. ANDERSON: Is the court instructing CTD to revise  
24 its motion to seek a second-amended complaint?

25 THE COURT: Yeah. So they are granted leave to file



1 an amended complaint but it's with conditions. So the  
2 conditions is the amended complaint is only going to allege  
3 allegations against CloudWatch. We're not going to see all  
4 this vagueness and generality we saw on the first-amended  
5 complaint. So that's the ruling on that.

6 MR. ANDERSON: Understood. Thank you, Your Honor.

7 THE COURT: Okay. 22-1039, CTD versus Cisco.

8 We still have Mr. Talanov.

9 And who do we have for Cisco?

10 MR. LIU: Your Honor, Charles Liu for Cisco.

11 THE COURT: Thank you.

12 So we have here Cisco's motion for judgment on the  
13 pleadings and plaintiff's motion for leave to file an amended  
14 complaint.

15 Let's start, I guess, with the amended complaint.

16 We have the same problems here, Mr. Talanov. How do  
17 you suggest you're going to try to cure something on an  
18 amended complaint?

19 MR. TALANOV: Yes, Your Honor.

20 So similarly to what we just discussed with respect  
21 to Amazon, plaintiff's amended -- proposed amended complaint,  
22 and specifically the claim chart, points to one product or  
23 system called Cisco Secure Workload, formerly known as  
24 Tetration and Cisco's own documents in this case refer to it  
25 as a unified platform, and that is the product or system that

1 we are specifically accusing or would like to seek leave to  
2 accuse.

3 THE COURT: Thank you.

4 So, yeah, that was the same problem though because  
5 the current complaint says, again, "by way of example and  
6 without limitation Cisco's Cloud Solution System," and then  
7 your various exhibits reference Cloud Analytics, Security  
8 Intelligence Operations, Secure Access by Duo, Umbrella,  
9 ThousandEyes, and you also reference Tetration.

10 So if I grant you leave to amend complaint I'm only  
11 going to see something on Secure Workload formerly Tetration,  
12 is that what I'm hearing from you?

13 MR. TALANOV: Yes, Your Honor.

14 THE COURT: So Mr. Liu, why doesn't that take care of  
15 things?

16 MR. LIU: Your Honor, the amended allegations against  
17 the Cisco Secure Workload would be futile because they still  
18 do not plausibly allege that this product meet all the  
19 elements of any patent claim that's asserted.

20 THE COURT: So you know, what I'm expecting to see  
21 this next go-around is him attempting to cure those  
22 deficiencies, and if not, I'm going to shift costs related to  
23 your motions in this case if I have to go that far. Why  
24 doesn't that cure any prejudice that your client might suffer?

25 MR. LIU: Your Honor, I believe that would cure most

1 of the prejudice.

2 THE COURT: Yeah. So with regard to this case the  
3 motion for judgment on the pleadings, Docket 24, is granted in  
4 part, denied in part, mooted in part.

5 Plaintiff's motion for leave to file an amended  
6 complaint, 38, is granted in part, denied in part.

7 I expect to see in an amended complaint just an  
8 allegation against Secure Workload, formerly Tetration. All  
9 the other vague generalities and vague references to other  
10 products of Cisco's is not going to be allowed. And I'm  
11 expecting the new claim charts to have specificity, and if  
12 they fail the next go-around, then there will be cost shifting  
13 for motions that are incurred.

14 Okay.

15 MR. LIU: Your Honor, I would just seek some  
16 clarification. Similar to the Amazon case we believe the  
17 schedule in the Cisco case would need to be expanded to allow  
18 defendant's sufficient time to respond to this -- to the next  
19 amended complaint.

20 THE COURT: Yeah. Thank you.

21 Oh, and by the way, the willfulness and presuit are  
22 also dismissed without prejudice as to Cisco.

23 Let me take up the whole scheduling order after all  
24 four.

25 MR. LIU: Thank you.

1 THE COURT: Thank you.

2 1042, Google.

3 Who do we have for Google?

4 MR. BRIERS: Good morning, Your Honor, Zachary  
5 Briers, and I'm joined by my colleague Adam Kwon who will be  
6 arguing the futility point. I would like to address the  
7 prejudice point, Your Honor.

8 THE COURT: Thank you.

9 Now, here we get a little more specificity,  
10 Mr. Talanov. At least there seems to be four identified  
11 products: Chronical; either I misspelled it or it's Simplify  
12 Soar, S-O-A-R; Google Web Risk; and Google Cloud Armor. Are  
13 those the four that you are alleging or are you alleging  
14 infringement by other Google products?

15 MR. TALANOV: Your Honor, what we are accusing is the  
16 single security suite. Using Google's own words, it's a  
17 security suite called Chronical Security Operations, and it  
18 comprises of several components, including Chronical SIEM,  
19 Chronical Soar, Threat Intelligence, and I believe the  
20 components that Your Honor mentioned.

21 But the point here is that we're pointing to a single  
22 system called the Chronical Security Operation. So similar to  
23 other cases we would like an opportunity to replead  
24 specifically against this security suite system known as a  
25 Chronical Security Operations.

1           THE COURT: So Mr. Briers, why don't you help me  
2 here? Google has a lot of products. Is that a product or is  
3 this another conglomeration of various different products?

4           MR. BRIERS: Plaintiff's initial allegations were an  
5 amalgamation of different products to meet different elements  
6 of the claim.

7           THE COURT: So he's amending his complaint. If I  
8 understand him correctly, is he alleging a specific product or  
9 is this still the same amalgamation problem?

10          MR. BRIERS: The amended complaint itself still  
11 identifies an amalgamation of products. The claim chart  
12 that's been attached to it, it seems, based on our review of  
13 this over the weekend, that plaintiff is trying to identify  
14 specifically Chronical.

15          So I believe that to be an amendment to their  
16 infringement allegations where they are no longer alleging  
17 that the three other products that are identified and still  
18 identified in paragraph 18 of their complaint infringe but  
19 instead they are pivoting to now argue that a single product,  
20 Chronical, meets all of the elements of the asserted patent  
21 claims. That's my best reading of plaintiff's infringement  
22 contentions.

23          MR. TALANOV: Your Honor, may I just briefly?

24          THE COURT: Go ahead.

25          MR. TALANOV: Forgive me, Your Honor. I just wanted

1 to clarify my previous statements.

2           So Page 1 of the, I guess, appended charts, it's the  
3 same issue as with the other cases, the language of the  
4 complaint itself needs to be cleaned up; however, the chart  
5 itself points to this one specific suite.

6           I wouldn't call it -- whether it's a product or a  
7 system, it's called Chronical Security Operations and it  
8 includes three components, and this is, again, this is  
9 Google's language out of their -- from their website.

10           It says, "Chronical Security Operations comprises  
11 Chronical S-I-E-M, Chronical S-O-A-R, and Threat  
12 Intelligence," so that is the system, Your Honor, the single  
13 system that we would like to replead to accuse.

14           MR. BRIERS: Just factually, Your Honor, that's not  
15 correct.

16           Those three systems are -- true, they fall under a  
17 business unit at Google and they are sometimes advised to  
18 customers to use for various aspects of their business.

19           They are products that are sold individually that  
20 individuals subscribe to individually. They are individual  
21 products. So plaintiff can't identify, for example, Soar and  
22 SIEM and piece them together in a way that they allege, one,  
23 meets one element of the claim limitation, another one meets  
24 another element of the claim limitation and argue that two or  
25 multiple products somehow infringe.

1           It does appear that that's what plaintiff's trying to  
2 do.

3           There are other reasons why plaintiff's proposed  
4 amendments would be futile that my colleague will address. I  
5 wanted to address the prejudice point, which I know Your Honor  
6 has been focused on because I think there are some specific  
7 facts about our case that are different from the other cases.

8           THE COURT: So I'm still trying to figure out which  
9 product --

10          MR. BRIERS: I understand.

11          THE COURT: -- the plaintiff is arguing against.  
12 So I understood Chronical.

13          Mr. Talanov, I'm not going to let you go with piecing  
14 together different products though. So pick a product and  
15 tell me what product that is.

16          MR. TALANOV: Your Honor, if I may just quote, again,  
17 this is Google's language that we have included in our claim  
18 chart if I may just read the sentence altogether.

19           It says, "Chronical Security Operations" -- which is  
20 the product we are accusing -- "comprises Chronical SIEM,  
21 Chronical Soar, and Threat Intelligence is a modern Cloud  
22 native suite that enables security teams to detect,  
23 investigate, and respond to cyber threats," et cetera, et  
24 cetera.

25           So what we would like to -- the single product that

1 we are accusing is Chronical Security Operations.

2 THE COURT: But so I think we are talking over each  
3 other though. You are going to want an amended complaint  
4 saying Chronical Security Operations and then I'm fully  
5 expecting that you're going to start throwing in products and  
6 so I want to know what specific products you're going to  
7 complain against in another amended complaint.

8 MR. TALANOV: Well, Your Honor, I guess, if I may,  
9 our position is that under *Centillion* this Chronical Security  
10 Operations system which comprises obviously several  
11 subcomponents or products, it worked together as a whole, as a  
12 single system that Google put together into use and obtains  
13 benefits from each and every element.

14 I'm happy to explain how and why, but, again, our  
15 position is that this is completely appropriate. This is a  
16 unified system and under Federal Circuit case law what can be  
17 accused is either a single product or if it's multiple  
18 products it needs to be an explanation how they work together  
19 as a whole which is what we would provide in the amended  
20 complaint should we be provided leave to amend, Your Honor.

21 THE COURT: So here's where I'm trying to give you  
22 some leeway to file an amendment but if you're going to do  
23 this, this services, which you are wanting to do plural not  
24 singular, you have to identify that you've met all the  
25 limitations of any asserted claim, and that's not where -- I



1 haven't seen you do that for multiple products amalgamated  
2 together. Where have you done that in this proposed amended  
3 complaint?

4 MR. TALANOV: Your Honor, so again, we believe that  
5 the claim chart in multiple -- the claim chart attached to the  
6 proposed amended complaint in multiple places points to  
7 Google's own language from their own websites and documents  
8 that describes this as a unified suite that works together,  
9 functions together, and because of its functioning together it  
10 obtains additional benefits.

11 In other words, had it just been one part of this  
12 Chronical Security Operation system alone or apart from others  
13 the entire system would not have gained all the benefits.

14 And a layman's sort of analogy, if I may provide for  
15 Your Honor, you know, I have terrible allergies here in  
16 Houston and my doctor prescribes me three different allergy  
17 medications, not because they do the same thing but each one  
18 covers a different spectrum but they all work as a system to  
19 protect me.

20 So same thing here, Your Honor. This is essentially  
21 an antivirus security software and each one provides, covers a  
22 certain spectrum but they work together as a whole. This is a  
23 system that Google has implemented, put together into use and  
24 obtains benefit from each one of these elements, so that's --

25 THE COURT: Yeah. I guess I have a problem with your

1 analogy now.

2 I mean, so if you're given one drop for mold -- you  
3 can tell I have allergies too, right -- and you get one drop  
4 for cat dander, you get another one for cedar, you've got to  
5 prove that there's infringement on one or all three of the  
6 drops. You can't amalgamate everything together. That seems  
7 to be what you're doing.

8 I'll let you think about that --

9 MR. TALANOV: Your Honor --

10 THE COURT: -- and let me hear from Mr. Kwon.

11 MR. KWON: Thank you, Your Honor.

12 And if I may, I have one point as well.

13 What I'm hearing Mr. Talanov say about the claim  
14 charts that have been proposed for the second-amended  
15 complaint, the header of it does identify this branch of  
16 Google products called Chronical Security Operations, but it  
17 even, in the header, it identifies three, Chronical SIEM;  
18 Chronical Soar; and Threat Intelligence, but if you look at  
19 the claim charts themselves, Threat Intelligence is never  
20 actually tied to any claim element in that whole claim chart.  
21 So even that header is overbroad, so that's part of the  
22 problem that we are identifying.

23 In terms of the idea that this motion for leave to  
24 amend moots the motions in general, we don't agree with that  
25 and the reasons why is because Google has raised four

1 arguments in our motion and this purported amendment -- or the  
2 amendment purports to address the first issue but completely  
3 ignores the other three.

4 I have prepared some slides as well, if I should  
5 connect them to the Zoom or I have a paper copy as well for  
6 you.

7 So as Your Honor is aware, our first argument is the  
8 argument we've just been discussing, and that comes from  
9 *Centillion* as well, and it appears plaintiff concedes that at  
10 least Google's first point was a good one.

11 So I'll go straight to the second argument, which  
12 also comes *Centillion* and I think that's an important point to  
13 raise here. There's been a lot of discussion about *Centillion*  
14 but what's being overlooked is that *Centillion* stands for a  
15 lot of things.

16 Number one is that plaintiff can't mix and match  
17 these product features, but importantly for Google's case at  
18 least, it also stands for the proposition that when a patent  
19 claim contains or requires hardware and software, a claim  
20 against the software manufacturer for only providing software  
21 is legally insufficient because it's an incomplete theory of  
22 infringement. And that's what's occurred here.

23 Specifically, the patents themselves require hardware  
24 and that is not a matter of interpretation. That's not a  
25 factual argument. The patents themselves say it. The

1 specifications of three of them say, "It is assumed that these  
2 systems consist of hardware."

3           And the fourth specification has slightly different  
4 language but it says in the section titled both "Review of  
5 Hardware" that this system can be comprised of any viral  
6 configuration of hardware that's required.

7           And if there's any doubt the claims themselves also  
8 require hardware, it says, "A system comprising individual  
9 computers." That is what is being claimed by these purported  
10 inventions.

11           So the problem here is that even if Google is accused  
12 of providing some software that can be used for these systems,  
13 that Google is not actually being accused of providing a  
14 complete infringing system. And that is the -- actually the  
15 bigger point in *Centillion*, and *Synchronoss*, and the *Traxcell*  
16 case from the Northern District of California that Google  
17 cited in our motions.

18           More importantly, the reason why this dismissal  
19 should actually be with prejudice is because plaintiff  
20 actually concedes that the way that these systems work is that  
21 they require hardware.

22           And in the allegations themselves, plaintiff accuses  
23 Google of providing a software that together with various  
24 equipment collectively includes a system that supposedly  
25 infringes, but plaintiff's whole theory is that Google sells

1 this software to customers and the end customers deploy it by  
2 themselves.

3           So the reason why dismissal should be with prejudice  
4 is this, because even if they have leave to amend, it would be  
5 futile. And in fact, we now have a proposed second-amended  
6 complaint to look at and it doesn't address this whatsoever.  
7 So that's actually the bigger point and the reason why  
8 granting the motion for leave to amend doesn't actually make  
9 sense because we'll just be here again and we'll dismiss it  
10 eventually.

11           The third argument that we raise in our motion is  
12 similar and it also results in a dismissal with prejudice in  
13 our point of view, but that's for two of the patents, not all  
14 four. The '470 and the '974 patents specifically, what they  
15 include is actually a second idea in their claimed inventions  
16 which is the idea of a counteroffensive measure.

17           And the important thing to note there is that in the  
18 patents themselves it distinguishes between a defensive  
19 countermeasure and a counteroffensive measure. And the only  
20 counteroffensive measures that it discusses in the patent  
21 involve, number one, sending some virus, Trojan virus or  
22 malware to the attacker's computer to destroy and wipe their  
23 hardware; or number two, well, what it actually says about  
24 that is that there is a lot of risk involved in that because  
25 you might accidentally wipe the hardware or the device of

1 somebody who is not actually an attacker, so in the event of a  
2 false trigger that would be a mistake.

3           So the solution that is proposed by the '470 and the  
4 '974 patents is to simply send something that disables the  
5 operating system of the attacker's computer until they can  
6 prove they are not an attacker.

7           And the whole point of that is the patent actually  
8 says it, the effects to the attacker is the same as if you  
9 wiped, destroyed their computer, but in the events that they  
10 are not an attacker, that they can prove it with a password  
11 and you can release their computer. And that is the  
12 counteroffensive measure that is required by every single  
13 claim in the '470 and the '974 patents.

14           Now, number one, putting aside the fact that's a  
15 pretty outlandish requirement and Google obviously does not  
16 sell any software that accomplishes that because I'm pretty  
17 sure that would be illegal, the allegations, which is why  
18 we're here, the allegations don't even say that.

19           What they actually allege is that plaintiff, the  
20 plaintiff alleges that Google provides a software that allows  
21 a customer to quarantine an infected computer from the rest of  
22 its network when a computer gets attacked. That's nothing  
23 close to a counteroffensive measure as the claims require.

24           So that's our argument for that and why the  
25 allegation theory here is incomplete and based on an

1 implausible theory because it requires an implausible  
2 interpretation of the patent. And the authority for that  
3 comes from the *AK Meeting* case, the *ALD Social* case, which are  
4 the subjects are of Google's notices of supplemental  
5 authority, the cases that recently got issued.

6 And those cases cite to Federal Circuit precedent,  
7 *Ottah* and *Juniper Networks*, these cases all say you dismiss,  
8 and you should dismiss, at the pleading stage if the  
9 allegations are incomplete or rely on an implausible  
10 construction of the claims. And that's the argument here for  
11 why the '470 and the '974 patent claims should be dismissed  
12 with prejudice.

13 The last argument that Google raised in our motion is  
14 related only to the '442 patent and this one is a similar  
15 argument to the counteroffensive measure issue, which is that  
16 this is a material claim element that plaintiff has failed to  
17 allege infringement of.

18 The '442 patent claims require -- it's actually quite  
19 long, but it requires scheduling custom antivirus software to  
20 printing on the threat level that has been perceived for that  
21 individual computer across every single network.

22 And on top of that, any time any computer in the  
23 whole network is attacked or threatened, every single computer  
24 gets updated with custom software, antivirus software tailored  
25 to that particular computer's vulnerability level.

1           What has been alleged is that a customer can use one  
2 of the Google products to write a custom script to then  
3 instruct the program to essentially operate like an electronic  
4 trigger and that trigger will then trigger a third-party  
5 antivirus software, like McAfee, to update its own generic  
6 antivirus update. And our position is that that doesn't come  
7 anywhere close to what the claim requires as well.

8           So for those reasons Google moves to dismiss the  
9 first-amended complaint, and for the second and third argument  
10 at least we would move for dismissal with prejudice.

11           THE COURT: Thank you.

12           Mr. Talanov, would you like to respond?

13           MR. TALANOV: Oh, absolutely, Your Honor.

14           First and foremost, let me just point out that this  
15 lengthy presentation which we just heard is exactly the  
16 inappropriate type of merits arguments and attempted claim  
17 construction of various terms that is not appropriate at the  
18 pleading stage. This is a notice type pleadings and  
19 plaintiff's -- what plaintiff proposes, again, provides -- you  
20 know, plausibly pleads each and every element.

21           I think one of the initial first argument was that  
22 Google, and for that matter all defendants I believe made that  
23 argument, provide solely the software, but, Your Honor, that  
24 is not the case. The whole gee-whiz of this invention is that  
25 it relates to a system of computers in a network and it



1 doesn't -- the software doesn't focus on just one particular  
2 computer. What it does is it collects data and intelligence,  
3 and that data and intelligence is analyzed in back-end  
4 defendant's processors and servers then determine the  
5 appropriate warnings and countermeasures.

6           You know, all those elements that counsel just argued  
7 were missing from the claim charts or from the complaint, but,  
8 Your Honor, that is entirely the point is that the claims  
9 focus on the system and it is defendant's, Google in this  
10 case, in particular who provides this entire system that works  
11 together. Google provides a software but it's not just  
12 software directed to one particular computer.

13           The entire point is that it collects intelligence and  
14 sends it back to this neuron to the brain that then interprets  
15 what it means based on multiple users. If multiple users are  
16 being attacked that means certain action needs to be taken.

17           As such, Your Honor, this case is more closely  
18 related to *Grecia v McDonald's*, a Federal Circuit opinion, 724  
19 Federal Appendix 942, where the Federal Circuit has held that  
20 *McDonald's* in that case, I guess terminals were sending  
21 customer security card data back to Visa, were not really part  
22 of the operating claims because they were merely -- and this  
23 is the Court's language -- "merely part of the environment,"  
24 because the claims really focused on what Visa did.

25           And same analogy was made with Microsoft in the

1 *Uniloc* case, also cited in *Grecia*, where the end users,  
2 Microsoft's end users were merely and their computers were  
3 merely part of the environment because the claims themselves  
4 really focused not on the users downloading or opening their  
5 software but really what happens with that software, what  
6 Microsoft does.

7           And similarly here, Your Honor, what really matters  
8 and what the claim is directed to is what Google does with the  
9 information it gets from the individual user's computers and  
10 then processes and essentially applies some artificial  
11 intelligence to then determine corrective causes of action  
12 predictive logic and then responses, correct responses and  
13 warnings.

14           And I believe the other point that counsel made, I  
15 believe they complain that several terms were missing, but the  
16 new charts, Your Honor, include that. They specifically, for  
17 the server limitation, they point out that this data is  
18 collected and processed to provide feedback.

19           Again, we believe that the charts fully address all  
20 of the complaints the defendant had just pointed out. And  
21 again, I just wanted to stress that these are just notice  
22 pleadings and we think that at this stage plaintiff has  
23 plausibly pleaded its case.

24           THE COURT: So I agree with you in part and disagree  
25 with you in part. So again, we have the same problem in your

1 proposed amended complaint here.

2           You say that the accused products refer, "by way of  
3 example," and again "without limitation," so I have a  
4 heartburn with that language. And then you begin to name a  
5 whole bunch of different products, and at this motion to  
6 dismiss stage if that's what you're going to do you're going  
7 to have to tie in the limitations to each of these products  
8 and you failed to do that.

9           And so in your proposed amended complaint you talk  
10 about -- I heard you talk about in this presentation that the  
11 accused product was Chronical Security Operations, but in your  
12 proposed amended complaint you talk about Simplify, Soar, Web  
13 Risk, Cloud Armor. I'm going to let you -- I'm going to grant  
14 you leave to amend.

15           So 36 is granted in part and denied in part.

16           You're going to need to pick your one product and so  
17 if your one product is going to be Chronical Security  
18 Operations then the claim chart has got to be limited to that  
19 and you're going to need to identify.

20           So now, the hardware issues and everything else, I  
21 mean, I'm not sure where you're going to go with this. This,  
22 of course, is not a ruling but I don't know how you overcome a  
23 summary judgment point because this isn't hardware but we're  
24 at a motion to dismiss stage right now.

25           MR. KWON: Your Honor, if I may.

1 THE COURT: Yeah.

2 MR. KWON: On the point that this is a motion to  
3 dismiss stage and perhaps claim construction seems premature  
4 in some issues, I don't believe this is one of those cases for  
5 a few reasons.

6 Number one, the prevailing Federal Circuit precedent  
7 actually comes from the Supreme Court case, *Teva*, "Claim  
8 construction is a matter of law that only sometimes depends on  
9 underlying subsidiary factual disputes," and I don't see a  
10 factual dispute here precluding that decision now.

11 The other thing that I wanted to note about that is  
12 that in this case we have agreed to defer discovery until  
13 after claim construction. So functionally and practically  
14 speaking this pleading stage and the claim construction stage  
15 is not much different.

16 The only difference is that they don't want to argue  
17 it now but I think that it's definitely ripe for adjudication.

18 THE COURT: So I'm going to give them one last  
19 chance. Like I said, 16 is granted in part and denied in  
20 part.

21 The motion to dismiss the first-amended complaint is  
22 granted to the extent that all these other infringing products  
23 are not alleged with sufficiency. The willfulness and the  
24 presuit are also dismissed but the plaintiff will be granted  
25 leave to amend his complaint to allege as to Chronical

1 Security Operations to the extent they can so 36 is granted in  
2 part.

3 And again, same thing on possible cost shifting if  
4 it's unsuccessful the next go-around and we get to that stage.

5 MR. BRIERS: Can I make reference just to that one  
6 point, Your Honor? And I'll be brief.

7 We have seen this playbook before and we anticipated  
8 that in this case and so we tried to make every effort to give  
9 plaintiff an opportunity to amend their complaint with  
10 imposing as least cost as possible on the defendants, and  
11 these are some specific facts from our case but we sent  
12 plaintiff an email back on December 22 identifying these  
13 deficiencies.

14 And then on January 5th we sent a six-page letter to  
15 the plaintiff's counsel identifying these deficiencies. It's  
16 not in the record because we didn't want to put it in the  
17 record but I brought a copy for Your Honor today. And we met  
18 and conferred with plaintiff before filing our motion to  
19 dismiss.

20 So we've given them plenty of opportunities to raise  
21 this. They waited until the last business day before this  
22 hearing to file that motion. So we do believe that at least  
23 in the Google case, given the number of opportunities and the  
24 number of times we've raised this, it would be appropriate to  
25 give plaintiff the option of if they decide to pursue a

1 second-amended complaint to be required to cover the fees  
2 associated with the motions to dismiss, at least in our case,  
3 given that history.

4 THE COURT: So you know, I'll take into account that  
5 history if we need to go to the next point of this case.

6 My hands are kind of tied. I mean, on a motion to  
7 dismiss it's not a summary judgment motion, and in every case,  
8 not just patent cases but all cases, everybody files motions  
9 to dismiss and procedurally I'm bound by certain limitations  
10 and so I'm sort of stuck.

11 Now, Mr. Talanov, though, I think the defendants are  
12 raising, and I'm pointing out to you all the deficiencies you  
13 have to cure the next go-around. I mean, this next go-around  
14 we're going to be on one product and it's going to simplify  
15 that claims chart, and if you can't make it then we've got  
16 some issues.

17 MR. TALANOV: Your Honor, if I may.

18 We completely understand that we need to address all  
19 the alleged deficiencies and to that point may we have an  
20 order for the defendants to provide copies of their  
21 presentations made today that were not provided, just to make  
22 sure that plaintiff has a fair opportunity to address all of  
23 those as it prepares its amendments?

24 THE COURT: I'm sure we don't need an order for that.  
25 They will be more than happy to give those to you.

1 MR. TALANOV: Thank you.

2 THE COURT: Okay. Let's move to 1049, Microsoft.

3 MR. LAMBERSON: Good morning, Your Honor, Jonathan  
4 Lamberson for Microsoft and Travis Underwood is here with me  
5 as well.

6 Not much to add, Your Honor. I think it's similar  
7 issues, particularly similar to the Google case, Your Honor.

8 As I understand the amended complaint they are now  
9 saying they are going to accuse three products which is the  
10 Defender for Cloud, Microsoft Sentinel, and I believe they are  
11 trying to accuse Defender for Endpoint, although it's not  
12 entirely clear.

13 They talk about this 365 product, but I believe they  
14 mean the Endpoint piece of it because that is how they map  
15 some of the agent limitations on the device sitting on, for  
16 example, on the table here today.

17 THE COURT: So let me stop you here, Mr. Lamberson.

18 So let's make sure all three of us understand which  
19 products are being accused on this amended complaint because I  
20 didn't even get what you said. I thought he was, in the  
21 amended complaint, accusing Azure and Microsoft Security  
22 Systems and just those two.

23 What are you intending to lodge against, Mr. Talanov?

24 MR. TALANOV: Again, Your Honor, we will correct the  
25 language in the complaint itself which appears to be not the

1 language that is in the claim charts but pointing to the first  
2 page of the claim charts against Microsoft attached to the  
3 complaint. It's the integrated SIEM XDR Suite Solution,  
4 that's what we are accusing.

5 Again, it comprises of Microsoft Sentinel, Microsoft  
6 365 Defender, and Microsoft Defender for Cloud, but the name  
7 for it, it is known as Microsoft SIEM and XDR.

8 THE COURT: So if you are going to allege more than  
9 one product, do we still have the same problem that you're not  
10 specifying in your claim charts all the elements?

11 MR. TALANOV: Your Honor, we believe the products as  
12 stated in Microsoft's website that we pointed to in our charts  
13 is SIEM-XDR Threat Protection Suite Solution.

14 THE COURT: So is that one product or more than one  
15 product?

16 MR. LAMBERSON: It's three products, Your Honor, and  
17 if I could explain further.

18 The 365 Defender has an Endpoint product and which  
19 would be something that would run on a device. It's called an  
20 Endpoint meaning but it's -- it could be a user device. It  
21 could be a device you have sitting on your desk there.

22 There's also a Cloud product that protects the Cloud  
23 which is servers remote.

24 And then there's another product, Century or  
25 something -- Sentinel, which is monitoring traffic, for



1 example, watching who is communicating with what.

2 All that they have cited is a document that says if  
3 you want to really secure your organization you could deploy  
4 these three things, but that doesn't make them one product.  
5 They are still three separate independent products.

6 And in some ways I think the eye drop analogy is a  
7 good one because, you know, the idea is these are three  
8 separate products and Microsoft doesn't combine them into one  
9 drug, if you will. In fact, they don't want people to do  
10 that.

11 The reason they are effective is precisely because  
12 they are separate products. And you know —

13 THE COURT: Well, they are effective because you make  
14 us buy three things.

15 MR. LAMBERSON: Well, no, but Microsoft didn't make  
16 anybody buy anything if they wanted to make a claim against  
17 the doctor or against the end person.

18 Microsoft makes a suite of products available.  
19 Somebody can buy whichever products they like, but the claim  
20 is does Microsoft make something that has all three? No.  
21 Does Microsoft use a system that has all three? No. It is up  
22 to the user.

23 I mean, Your Honor's computer sitting there, I'm sure  
24 some wonderful IT person put some software on there. It  
25 wasn't Microsoft that made that computer with that software or

1 that uses that computer with that software. That's the issue  
2 and that's what's pled. That is the allegation that is pled.

3 THE COURT: Go ahead, Mr. Talanov.

4 MR. TALANOV: Your Honor, may I just read one  
5 sentence? Again, this is quoting Microsoft website for  
6 SIEM-XDR Threat Protection web page, and it reads, "Our  
7 combined SIEM and XDR solution" -- referring to it as a single  
8 solution -- "enables security operations teams to detect,  
9 investigate, respond to and defend against threats with fully  
10 integrated" -- fully integrated, again, e-term -- "and  
11 comprehensive set of capabilities including security  
12 information and event management, security orchestration  
13 automation," et cetera, et cetera. And he refers to it as a  
14 single fully integrated combined solution.

15 THE COURT: So I haven't looked at the Microsoft  
16 website but, I mean, it seems to be marketing fluff, right?  
17 Don't they sell the 365 as, you know -- well, I guess that's a  
18 bad analogy. 365 includes Excel and Word and everything else,  
19 so they are sort of -- that is one product.

20 Never mind. My analogy is bad.

21 MR. TALANOV: Forgive me, Your Honor, if I may just  
22 again point out to, you know, what I've already argued.

23 Again, this is a pleading stage. Discovery hasn't  
24 yet taken place into how these products actually work, how  
25 many of them there are, but on its face we have plausibly

1 pleaded whether or not this is marketing language. You know,  
2 respectfully plaintiff believes that this at least puts  
3 together some evidence that this is, in fact, one system or  
4 product that works together.

5           So again, Your Honor, we believe that's under  
6 *Higby-Twombly-Iqbal* plausibility pleading notice standard. We  
7 have definitely met that standard.

8           MR. LAMBERSON: If I could bring up one of my slides,  
9 just for a moment, Your Honor, and we are happy to share these  
10 of course.

11           Just to be clear, having separate products or even a  
12 single product is a different question from what are we  
13 talking about with these claims. And what these claims say is  
14 that you have a distributed system with multiple computers and  
15 then on each computer you're going to have an agent.

16           And one of those agents on an individual computer is  
17 going to do various things, but that agent, that single agent  
18 has to do all of those things. And so just saying, well,  
19 Microsoft sells stuff for the Cloud that does, you know, Thing  
20 A, and they sell something for a desktop that does Thing B,  
21 and they say you could do both things.

22           Well, that is not having an agent on a computer doing  
23 both things. They are two separate questions. And that is  
24 what they are struggling with and what Your Honor is  
25 struggling with, is can they find something, some product that

1 does all the things required by this claim.

2 And at least for Microsoft they absolutely cannot  
3 because they have to, for their contention against Microsoft  
4 they have to go to both the end-user device and the Cloud.  
5 And the minute they do that with two different products  
6 running in two different places, they cannot meet this claim  
7 which says you have an agent on a computer doing these things,  
8 not multiple agents in multiple places doing multiple things.

9 THE COURT: Mr. Talanov.

10 MR. TALANOV: Yes, Your Honor.

11 I will just say that, again, this is exactly the same  
12 type of impermissible merits arguing claim construction type  
13 arguments that should not be -- the Court should not allow at  
14 this stage, whether it's an agent, a single agent, whether  
15 it's one component, the entire system, that is to be  
16 determined. Claims construction is simply inappropriate at  
17 this stage.

18 And again, Your Honor, we believe we have plausibly  
19 pleaded in the amended complaint what we needed to do with  
20 respect to Microsoft and I will just leave it at that.

21 THE COURT: So 13, the motion to dismiss the claim is  
22 granted in part, denied in part, mooted in part.

23 Any allegations of willfulness and presuit, that's  
24 dismissed without prejudice.

25 It's granted in part to the extent that the current

1 complaint fails to put Microsoft on notice of what products  
2 are accused.

3           This is a closer call for me because you seem to be  
4 holding onto, Mr. Talanov, that you want to, on your motion  
5 for leave to file an amended complaint, tie in products,  
6 plural. I'm real hesitant to let you do that. And I'm not  
7 going to let you do that. So you're going to pick one product  
8 for your amended complaint and see if you can get around the  
9 deficiencies that defendants believe exist.

10           Okay.

11           MR. TALANOV: Yes, Your Honor.

12           THE COURT: With that addressed, let's talk about the  
13 scheduling order. How much time do you need to file amended  
14 complaints, Mr. Talanov?

15           MR. TALANOV: We believe a week should be sufficient.

16           THE COURT: A week? Did I hear you right?

17           MR. TALANOV: Yes, Your Honor.

18           THE COURT: So in the next week or so we'll see  
19 amended complaints.

20           In light of that, what do we need to do with the  
21 scheduling order from all your perspectives?

22           MR. LAMBERSON: Well, Your Honor, we at least need to  
23 push out, you know, the deadline for the invalidity  
24 contentions, for example, which are due I believe -- let me  
25 look. May 25th is the current deadline but obviously those

1 critically hinge on what is accused and what is the scope of  
2 the infringement case.

3 I would think, you know, when we are going to have to  
4 potentially — I mean, the reality here, Your Honor, what I  
5 have seen and heard is that all of these defendants are likely  
6 going to have additional 12(b) motions. My proposal would be  
7 that we basically push out the entire schedule for a period  
8 of, let's say, three months so that we can resolve those  
9 motions.

10 I'm not confident that these issues can be resolved,  
11 Your Honor, so why do a bunch of contentions when this issue  
12 may be dispositive?

13 THE COURT: Yeah; I sort of agree with that.

14 Mr. Talanov, your thoughts?

15 MR. TALANOV: Your Honor, plaintiff is amenable to  
16 doing the three-month extension on all the deadlines I guess  
17 that are currently at issue as defendants have proposed.

18 THE COURT: But how do we tackle the fact that I'm  
19 fully expecting another round of motions to dismiss to be  
20 filed? Do we stay all discovery right now, just have a  
21 deadline for the amended complaints and the motions to dismiss  
22 and then perhaps then we take up the issue of scheduling  
23 orders after that? Maybe that's the answer.

24 MR. LAMBERSON: We've already agreed, Your Honor, the  
25 parties, that we're not going to do discovery until after

1 claim construction so that's not really an issue here.

2 THE COURT: Well, what about just not doing anything  
3 at all until we get amended complaints and then motions to  
4 dismiss and then a briefing deadline for a response and a  
5 reply? Maybe that's all we should do at this point.

6 What's your thoughts on that?

7 MR. LAMBERSON: That's fine for defendants.

8 THE COURT: Anybody from a different idea?

9 What about Mr. Talanov, what do you think of that?

10 MR. TALANOV: I think that makes sense, Your Honor.

11 THE COURT: So then why don't you-all work out  
12 together what's going to be the deadline for the amended  
13 complaints. Seven to ten days seems to be what Mr. Talanov  
14 thinks he can do.

15 Then you-all talk and submit to me when the motions  
16 to dismiss should be filed, a response and reply and we vacate  
17 everything else.

18 What else do we need to take up today?

19 Anything else from the plaintiff?

20 MR. TALANOV: No, Your Honor.

21 THE COURT: Anybody here?

22 MR. LAMBERSON: Just to clarify, Your Honor, I think  
23 if we're vacating the existing schedule that also addresses  
24 the separate issues we had sent in a notice on, so I'm just  
25 going to assume those are going to be dealt with down the

1 road.

2 THE COURT: Right. Everything else is vacated until  
3 we figure out what survives.

4 MR. LAMBERSON: Thank you, Your Honor. Then nothing  
5 else for Microsoft, Your Honor.

6 THE COURT: Thank you.

7 Anybody else?

8 MISS GIESE: Nothing else for Google, Your Honor.

9 MR. ANDERSON: Nothing for Amazon.

10 MR. LIU: Nothing for Cisco.

11 THE COURT: Thank you. We'll see you-all.

12 *(Concludes proceedings)*

13 -o0o-

14 I certify that the foregoing is a correct transcript from  
15 the record of proceedings in the above-entitled matter. I  
16 further certify that the transcript fees and format comply  
17 with those prescribed by the Court and the Judicial Conference  
18 of the United States.

19  
20 Date: 04/12/23

/s/ *Gigi Simcox*  
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